

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 97-10234-PBS

**JOSE JULIO DA SILVA
a/k/a ADAIR ANTONIO DA SILVA
Defendant**

**MEMORANDUM OF SENTENCING HEARING
AND
REPORT OF STATEMENT OF REASONS**

Saris, D.J.

Counsel and the defendant were present for sentencing hearing on 5/10/04. The matters set forth were reviewed and considered. The reasons for sentence pursuant to Title 18 U.S.C. 3553(c), as set forth herein, were stated in open court.

1. Was the presentence investigation report (PSI) reviewed by counsel and defendant including any additional materials received concerning sentencing?

☒ yes ☐ no
2. (a) Was information withheld pursuant to FRCrP 32(c) (3) (A)?

☐ yes ☒ no

(b) If yes to (a), has summary been provided by the court pursuant to FRCrP 32(c) (3) (B)?

☐ yes ☐ no N/A
3. (a) Were all factual statements contained in the PSI adopted without objection?

☒ yes ☐ no

(b) If no to (a) the PSI was adopted in part with the exception of the following factual issues in dispute:

- (c) Disputed issues have been resolved as follows after
____ evidentiary hearing, ____ further submissions
and/or ____ arguments:

4.(a) Are any legal issues in dispute?

____ yes X no

If yes, describe disputed issues and their resolution:

5.(a) Is there any dispute as to guideline applications
(such as offense level, criminal history category,
fine or restitution) as stated in the PSI?

____ yes X no

If yes, describe disputed areas and their resolution:

(b) Tentative findings as to applicable guidelines are:

Total Offense Level: 12

Criminal History Category: I

 10 to 16 months imprisonment

 24 to 36 months supervised release

\$ 3,000 to \$ 30,000 fine

(plus \$ cost of
imprisonment/supervision)

\$ restitution

\$ 400.00 special assessment (\$ on
each of counts)

6.(a) Are there any legal objections to tentative findings?

____ yes X no

(b) If no, findings are adopted by the Court.

(c) If yes, describe objections and how they were addressed:

OR sentence hearing is continued to to allow for
preparation of oral argument or filing of written submission by .

7.(a) Remarks by counsel for defendant.¹

 X yes no

(b) Defendant speaks on own behalf.

 yes X no

(c) Remarks by counsel for government.

 X yes no

8.(a) The sentence will be imposed in accordance with the prescribed forms in the Bench Book Sec. 5.02 as follows:

 TIME SERVED months imprisonment

 months/intermittent community confinement

 months probation

 36 months supervised release

\$ fine (including cost of imprisonment/supervision)

\$ restitution

\$ 400.00 special assessment (\$ on each of counts)

Other provisions of sentence: (community service, forfeiture, etc.):

-DEFENDANT SHALL NOT RE-ENTER THE UNITED STATES WITHOUT THE AUTHORITY OF THE ATTORNEY GENERAL.

(b) After imposing sentence, the Court has advised the defendant of the defendant's right to appeal within 10 days of the entry of judgment in accordance with FRCrP 32(a)(2).

9. Statement of reasons for imposing sentence.
Check appropriate space.

(a) X Sentence is within the guideline range and that range does not exceed 24 months and the Court finds no reason to depart from the sentence called for by application of the guidelines.

OR Sentence is within the guideline range and that range exceeds 24 months and the reason for imposing the selected sentence are:

¹ The order of argument and/or recommendation and allocution may be altered to accord with the Court's practice.

(b)___ Sentence departs from the guideline range as a result of:

___ substantial cooperation upon motion of the government

OR

___ a finding that the following (aggravating or mitigating) circumstance exists that is of a kind or degree not adequately taken into consideration by the Sentencing Commission in formulating the guidelines and that this circumstance should result in a sentence different from that described by the guidelines for the following reasons:

(c)___ Is restitution applicable in this case?

___ yes X no

Is full restitution imposed?

___ yes ___ no

If no, less than full restitution is imposed for the following reasons:

(d)___ Is a fine applicable in this case?

 X yes ___ no

Is the fine within the guidelines imposed?

___ yes X no

If no, the fine is not within guidelines or no fine is imposed for the following reasons:

 X Defendant is not able, and even with the use of a reasonable installment schedule is not likely to become able, to pay all or part of the required fine; OR

 X Imposition of a fine would unduly burden the defendant's dependents; OR

___ Other reasons as follows:

10. Was a plea agreement submitted in this case?

 X yes ___ no

Check appropriate space:

___ The Court has accepted a Rule 11(e)(1)(A) charge agreement because it is satisfied that the agreement adequately reflects seriousness of the actual offense behavior and accepting the plea

agreement will not undermine the statutory purposes of sentencing.

X The Court has accepted either a Rule 11(e) (1) (B) sentence recommendation or a Rule 11(e) (1) (C) sentence agreement that is within the applicable guideline range.

_____ The Court has accepted either a Rule 11(e) (1) (B) sentence recommendation or a Rule 11(e) (1) (C) sentence agreement that departs from the applicable guideline range because the Court is satisfied that such a departure is authorized by 18 U.S.C. 3553(b).

11. Suggestions for guideline revisions resulting from this case are submitted by an attachment to this report.

_____ yes X no

12. The PSI is adopted as part of the record, either in whole or in part as discussed above and is to be maintained by the U.S. Probation Department under seal unless required for appeal.

13. Judgment will be prepared by the clerk in accordance with above.

14. The clerk will provide this Memorandum of Sentencing Hearing And Report on Statement of Reasons to the U.S. Probation Department for forwarding to the Sentencing Commission, and if the above sentence includes a term of imprisonment, to the Bureau of Prisons.

Date

S/PATTI B. SARIS
United States District Judge